

HOUSE No. 3200

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph R. Driscoll, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to public safety and fair practices in procurement relating to the Commonwealth of Massachusetts selection of land surveyors.

PETITION OF:

NAME:

Joseph R. Driscoll, Jr.

DISTRICT/ADDRESS:

5th Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO PUBLIC SAFETY AND FAIR PRACTICES IN PROCUREMENT RELATING TO THE COMMONWEALTH OF MASSACHUSETTS SELECTION OF LAND SURVEYORS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

SECTION 1.

The General Laws are hereby amended by deleting Section 8A of Chapter 81, in its entirety and inserting the following new Section:--

Section 8A. The Department shall publicly announce all Requests for Engineering Survey Services; procure these services on the basis of demonstrated competence and qualifications; and negotiate contracts after selecting a firm, at fair and reasonable prices.

The Department shall adhere to the following processes for each Request of Engineering Survey Services.

(A) PUBLIC NOTICE.

Whenever a project requiring Engineering Survey Services or related professional services is proposed for the Department, the Department shall provide no less than 14 days advance notice published in a professional services bulletin or advertise with the official Department website setting forth the project and services to be procured. The professional services bulletin shall be made available to each firm that requests the information. The professional services bulletin shall include a description of each project and shall state the time and place for interested firms to submit a letter of interest and, if required by the public notice, a statement of qualifications. If it is determined that a sole source selection of a qualified firm is in the best interest of the agency then the project is not publicly advertised.

(B) EVALUATION PROCEDURE.

The Department shall evaluate the firms submitting letters of interest and other prequalified firms, taking into account qualifications; and the Department may consider, but shall not be limited to considering, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm and any other qualifications based on factors as the agency may determine in writing are applicable. The Department may conduct discussions with and requires presentations by firms deemed to be the

26 most qualified regarding their qualifications, approach to the project and ability to furnish the
27 required services. In no case shall the Department, prior to selecting a firm for negotiation seek
28 formal or informal submission of verbal or written estimates of costs and proposals in terms of
29 dollars, hours required, percentage of construction cost, or any other measure of compensation.

30 (C) SELECTION PROCEDURE.

- 31 (1) An agency shall select engineering survey firms and related professional firms on the
32 basis of qualifications for the type of professional services required. The Department
33 may solicit or use pricing policies and proposals or other pricing information to
34 determine consultant compensation only after the Department has selected a firm and
35 initiated negotiations with the selected firm.
- 36 (2) The procedures that the Department creates for the screening and selection of firms
37 shall be within the sole discretion of the Department and may be adjusted to
38 accommodate the Department's scope, schedule and budget objectives for a particular
39 project. Adjustments to accommodate the Department's objectives may include
40 provision for the direct appointment of a firm if the value of the project does not
41 exceed \$25,000, or if it is determined that a sole source selection of a qualified firm is
42 in the best interest of the Department and the project is not publicly advertise.
- 43 (3) The decision of the Department that has complied with the provisions of this Act is
44 final and binding.

45 (D) CONTRACT NEGOTIATION.

- 46 (1) The Department and the selected firm shall mutually discuss and refine the scope of
47 services for the project and shall negotiate conditions, including but not limited
48 to compensation level and performance schedule based on the scope of services. The
49 compensation level paid must be reasonable and fair to the Department as determined
50 solely by the Department. In making such determination, the Department shall take
51 into account the estimated value of the services to be rendered, the scope, complexity,
52 and professional nature thereof.
- 53 (2) If the Department and the selected firm are unable for any reason to negotiate a contract
54 at a compensation level that is reasonable and fair to the Department, the Department
55 shall, in writing, formally terminate negotiations with the selected firm. The
56 Department shall then negotiate with the second ranked most qualified firm. The
57 negotiation process may continue in this manner through successive ranked firms until
58 an agreement is reached or the agency terminates the consultant contracting process.